

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0239P

Use Tax

Calendar Years 1993, 1994, 1995

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ISSUE(S)

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer protests the penalty assessed on an audit completed on April 7, 1998.

Taxpayer failed to self-assess and remit use tax on fifty-nine percent (59%), eighty-two percent (82%) and seventy-four percent (74%) of its purchases for 1993, 1994, and 1995, respectively. Taxpayer is an Indiana Corporation with its main office located in Indiana during the audit period. The corporate accounting records and most of the officers were located in Kentucky.

1. **Tax Administration** – Penalty

DISCUSSION

Taxpayer takes exception to the imposition of penalties because it relied on legal authorities, which are referenced in taxpayer's protest letter dated April 30, 1998. The relevant legal authorities governing are IC 6-8.1-10-2.1(d), (e), (f), Indiana regulation 45 IAC 15-11-22 Sec.2 (b) and regulation 45 IAC 15-11-2 Sec. 2(c).

Taxpayer further states it is comprised of thirteen (13) branches in southern Indiana just across the Ohio River from Louisville, KY and is part of their Kentucky/Indiana market. The major audit deficiency is related to taxable asset purchases. Almost seventy-five percent (75%) of this deficiency is related to

Kentucky sales and use tax charged in error. In 1993 sixty-seven (67%) is related to just two vendors. For taxable expense purchases upward of twenty-eight percent (28%) in 1993 was caused by Kentucky sales and use tax charged in error and twelve percent (12%) in 1994 and 1995. Also in the case of taxable expense purchases, the distinction between what is or is not an improvement to realty are often gray as demonstrated by the fact that none of these transactions were charged tax by the contractor and that 50 IAC 43.2-4.10 which delineates between real and personal property is in the property tax section not the sales and use tax section.

While the taxpayer has not been previously audited under its current ownership, it is a large multi-state banking company and has the staff and available expertise to have avoided a significant number of the errors in the audit. As taxpayer had very few Indiana locations during the audit period, the assessment is significant and the issue is clear in the Indiana Code and Regulations.

The taxpayer was negligent in failing to remit the use tax due.

FINDING

Taxpayer's protest is denied.